



Art 3743
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

I re Patent Application of) Examiner: Kathryn Odland
Harry J. Buncke)
Serial No.: 09/596,806) Group Art Unit: 3743
Filed: June 19, 2000) File No.: 540P
For: SURGICAL CLIP APPLIER) Tiburon, California
WITH REMOTE OPERATION)
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS
FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:
COMMISSIONER FOR PATENTS, PO BOX 1450, ALEXANDRIA, VIRGINIA 22313.

ON 12/3/04
THOMAS M. FREIBURGER, Reg. No. 27,063
SIGNED [Signature]
DATE 12/3/04

Dear Sir:

OBJECTION TO SUPPLEMENTAL EXAMINER'S ANSWER

All permitted briefs had been submitted in this appeal as of October 5, 2004, the date of receipt of the applicant's reply brief. On November 30, 2004 Examiner Odland submitted an impermissible supplemental examiner's answer, responding to the applicant's reply brief. The examiner's supplemental answer was entitled "REPLY BRIEF NOTED". In this supplemental examiner's answer she made two and one-half pages of argument in opposition to the applicant's reply brief.

Rule 193 (37 CFR 1.193) specifically prohibits such a supplemental response of the examiner following an appellant's

reply brief.

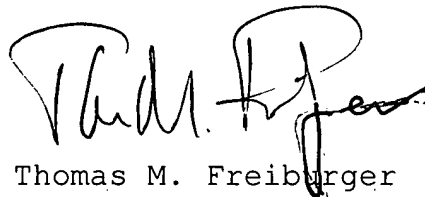
It is respectfully requested that the examiner's new brief be stricken from the record.

However, if the Board should consider the improper brief, the applicant wishes to point out that the examiner is mistaken at every point of her argument. The quoted passages in italics on page 2 of her brief are nearly identical in wording and are absolutely identical in meaning, yet the examiner argues a major difference. It is respectfully submitted that the examiner does not understand this invention.

Further, the long paragraph in the bottom half of page 3 of her brief is contrary to the facts and makes no sense at all. The examiner assumes that "remote actuation" with some flexibility or bendability in the remote actuator, will isolate the tip of the device from movement applied at the actuator end. She ignores the fact that Swiggett says his remote extension device is flexible but once bent will remain in the shape to which the user deliberately bends it. Thus, it is similar to a flexible gasoline can nozzle, clearly transferring any motion at the actuator end directly to the tip. Moreover, it would entirely frustrate the purpose of Swiggett if the remote extension device were sufficiently flexible to avoid a movement of the tip induced by movement at the actuator end (i.e. very flimsy), because the gripping of the actuator end by the user is

the only means intended and taught by Swiggett of steering the device to where it is intended to go and be used. It is submitted that the examiner does not understand the Swiggett reference or its function.¹

Respectfully,

A handwritten signature in black ink, appearing to read 'Th. M. Freiburger', with a stylized flourish at the end.

Date: December 3, 2004

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¹ This is not intended as a "personal attack" as alleged earlier by the examiner (the attorney does not know the examiner); it is only an attack on the quality of the examination and the manner in which the examiner has done her job, as well as the resulting unnecessary cost to the applicant.